

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3884 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
No
2. To be referred to the Reporter or not? No :
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No : NO
5. Whether it is to be circulated to the Civil Judge? No :

DAHYABHAI TEJABHAI

Versus

AMC

Appearance:

MR VB GHARANIYA for Petitioners

Ms.Amita Shah MR KIRIT I PATEL for Respondent No. 1, 2

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 28/06/1999

ORAL JUDGEMENT

1. The prayer of the petitioners in this writ petition is firstly that the respondents may be directed by a writ of mandamus not to terminate their service without following due process of law and secondly that the respondents be directed to regularise the services of the petitioners as per direction given by this Court in Special Civil Application No.177 of 1997 and allied group

of matters.

2. In response to show cause notice Counter Affidavit has been filed by Shri V.V.Barot. No Rejoinder Affidavit has been filed by the petitioners. None is present on behalf of the petitioners though the list has been revised four times. Learned Counsel for the respondents has been heard and the petition as well as the counter Affidavit has been examined.

3. In the counter Affidavit it is rightly mentioned that disputed questions of fact, viz. whether the petitioners have completed 900 days within span of five years or not cannot be decided in a petition under Article 226 of the Constitution of India. For this reason the petition is not maintainable.

4. The second ground taken in the counter Affidavit is that there is alternative remedy and the petitioners should have approached the Labour Court. The writ petition is therefore barred by existence of alternative remedy.

5. The third objection is that the petitioners have suppressed material fact. It is deposed in Para : 6 of the counter Affidavit that in view of heavy financial liability of the Corporation no new work is possible at present. The petitioners were engaged as daily wagers. They can not now be absorbed in any other project. However, under Resolution No.36 dated 24.5.1999 15 days work was allotted to the petitioners in contingent establishment of Engineering Traffic Department to white-wash each zone and the work was allotted to the petitioners on the next day, but on 26.5.1999 they approached this Court suppressing the above fact and tried to obtain ad.interim relief. The objection, therefore, is that since the petitioners have not come with clean hands they are not entitled to any relief under Article 226 of the Constitution of India. This objection also cannot be said to be without force.

6. The last objection is that the representation of the petitioners, though not made in time, has been decided by the Corporation and as such the petition is not maintainable.

7. It is denied that oral threat has been given for termination of petitioners' service. It has been deposed in the Counter Affidavit that neither any oral threat for termination was given nor the petitioners are in employment nor they have completed 240 days in a calender

year.

8. For the reasons given above and considering the above objections in the Counter Affidavit the writ petition is dismissed. No order as to costs.

sd/-

Date : June 28, 1999 (D. C. Srivastava, J.)

sas